In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 1039

ZELLERBACH PAPER COMPANY, A CORPORATION
petitioner

v.

GUY T. HELVERING, AS COMMISSIONER OF INTERNAL REVENUE

No. 1040

ZELLERBACH PAPER COMPANY, A CORPORATION, AS Transferee of A. S. Hopkins Company, petitioner

v.

GUY T. HELVERING, AS COMMISSIONER OF INTERNAL REVENUE

No. 1041

NATIONAL PAPER PRODUCTS COMPANY, A CORPORATION, petitioner

v.

GUY T. HELVERING, AS COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

59596—34

Pursuant to the Revenue Act of 1918, a return was filed for the fiscal year ending April 30, 1921. The Revenue Act of 1921 was enacted on November 23, 1921. Since it was effective as of January 1, 1921, it altered the tax liability in question. However, no new return was made under the 1921 Act. A deficiency letter was mailed on May 11, 1928. The question involved is whether the taxpayer has failed to file a return under the Revenue Act of 1921, so as to prevent the running of the statute of limitations for determining deficiencies.

The decision of the court below held that the return filed under the 1918 Act did not operate to start the running of the period of limitation under the 1921 Act. This decision is in accord with many decisions of the Board of Tax Appeals. It is also supported by two decisions involving the 1917 and 1918 Acts. *Globe Excelsior Oak Tanning Co.* v. *United States,* 2 F.Supp. 470 (C.Cls.), certiorari denied, 290 U.S. 627; *Clifton Mfg. Co.* v. *United States,* C.C.A. 4th, decided April 3, 1934. The decision below, however, is in direct conflict with the decisions in *Valentine-Clark Co.* v. *Commissioner,* 52 F. (2d) 346 (C.C.A. 8th); *Goldmann Co.* v. *Burnet,* 51 F. (2d) 427 (App.D.C.), and *Myles Salt Co.* v. *Commissioner,* 49 F. (2d) 232 (C.C.A. 5th).

Although we believe that the decision below is correct, we do not oppose the present petition because of the conflict of decisions.

Respectfully submitted.

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MAY 1934.

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